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Attorneys for Plaintiff,
EMILY CECILIA McCUE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PRELIMINARY STATEMENT

18 1. Plaintiff EMILY CECILIA McCUE is the only child of the deceased
19 CRAIG McCUE (“Decedent”), and brings this action against Defendant United States of
20 America under the Federal Tort Claims Act.

21 2. Plaintiff's action is for the wrongful death of her father who perished as a
22 result of dangerous condition of public property and/or other negligent acts or omissions
23 by Defendant which caused or exacerbated a motorcycle crash.

24 3. Plaintiff has exhausted her administrative claims, as Plaintiff filed the
25 required claim forms with Defendant and Defendant failed to make a final disposition
26 within six (6) months, as set forth in 28 U.S.C. § 2675(a).

27 4. Plaintiff alleges on personal knowledge as to all facts known to her, and on
28 information and belief as to all other facts, as follows:

JURISDICTION AND VENUE

5. This court has jurisdiction over the subject matter of this complaint under 28 U.S.C. §§ 1331 and 1346(b).

4 6. Plaintiff is informed and believes, and thereon alleges, that at all times
5 herein mentioned, U.S. ARMY CORPS OF ENGINEERS was and is a governmental
6 entity authorized by the United States of America, and was the owner, operator, lessor,
7 and or lessee of the roadway, and/or certain appurtenances thereto, where the motorcycle
8 collision which forms the basis of this action occurred. Plaintiff further alleges that a
9 Governmental Tort Claim has been filed on May 2, 2022. No rejection has been received
10 to date. Attached hereto as Exhibit "1" and incorporated herein by reference is a true and
11 correct copies of the government tort claim to the U.S. Army Corps of Engineers.

12 7. Jurisdiction and venue are proper within this district under 28 U.S.C.
13 §1402(b) as the events giving rise to Plaintiff's Complaint occurred in the City of Pico
14 Rivera, County of Los Angeles, State of California.

PARTIES

16 8. Plaintiff Emily Cecilia McCue is and was at all relevant times a resident of
17 the State of California, County of Los Angeles.

18 9. Defendant United States is sued for the wrongful death of her father,
19 caused by the negligent or wrongful acts or omissions of the U.S. Army Corps of
20 Engineers. As such, the United States is the appropriate defendant under the Federal Tort
21 Claims Act.

GENERAL ALLEGATIONS

23 10. Plaintiff Emily Cecilia McCue is a citizen of the United States of America.

24 11. The events giving rise to this cause of action occurred on or about
25 November 23, 2021 at approximately 5:59 p.m. on Sports Arena Drive north of L
26 Hills, in City of Pico Rivera, California.

27 12. On or about November 23, 2021 at approximately 5:59 p.m., Decedent
28 CRAIG McCUE was the driver of a motorcycle traveling on Sports Arena Drive north of

1 Rose Hills, in City of Pico Rivera, California. Due to debris in the roadway, Decedent
2 lost control of his motorcycle and crashed into a dangerously placed and improperly
3 positioned K-rail, resulting in his death, and causing harms, losses and damages to the
4 Plaintiff. On information and belief, the debris was deposited and the K-rail placed and
5 positioned by the U.S. Army Corps of Engineers.

6

7 **FIRST CAUSE OF ACTION**

8 **WRONGFUL DEATH BASED ON DANGEROUS CONDITION OF PUBLIC**
9 **PROPERTY PURSUANT TO CAL. GOVT. CODE SECTION 835**

10 **(Against All Defendants)**

11 13. Plaintiff hereby repeats and realleges each and every allegation contained in
12 Paragraphs 1 through 12 inclusive, and incorporates the same herein by reference as if set
13 forth fully and completely at length.

14 14. On November 23, 2021, and prior thereto, U. S. Army Corps of Engineers
15 owned, maintained and controlled the stretch of roadway known as Sports Arena Drive
16 (aka Rooks Road) 413 feet north of Rose Hills Road (Latitude 34.019514, Longitude -
17 118.052719), City of Pico Rivera, County of Los Angeles, State of California.

18 15. On November 23, 2021, and prior thereto, the above-described roadway
19 was in a dangerous condition that created a substantial risk when the roadway was used in
20 a manner that is reasonably foreseeable. The roadway was dangerous in that there were
21 debris and dangerously and improperly positioned K-rails that posed a known hazard for
22 motorcyclists and other motorists, and a lack of proper signs and warnings thereof, all of
23 which contributed to the accident and resulting harms described herein. As a result, the
24 roadway was in a dangerous condition including because of, but not limited to, the
25 presence of debris, dangerously and improperly positioned K-rails, and the lack of
26 markings, proper warnings and other precautions necessary to warn motorcyclists and
27 other motorists of a potentially dangerous condition of the roadway.

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1 16. U.S. Army Corps of Engineers had actual knowledge of the existence of
2 the dangerous condition and knew or should have known of its dangerous character a
3 sufficient time prior to November 23, 2021, to have taken measures to protect against the
4 dangerous condition. In addition, based on information and belief, an employee or
5 employees of the Defendants negligently or otherwise wrongfully created the dangerous
6 conditions, or permitted them to exist, putting the Defendants on actual and constructive
7 notice of the dangerous conditions alleged herein and of the concomitant need to erect
8 appropriate controls and warnings. These conditions left motorists unprotected,
9 vulnerable and unable to take evasive action to avoid collision.

10 Accordingly, Defendant is liable pursuant to *California Government Code* Section
11 835, and other relevant sections of the *Government Code*, including but not limited to
12 Sections 830.8, 830(c) and 821.4.

13 17. On November 23, 2021 at approximately 5:59 p.m., Decedent CRAIG
14 McCUE was the driver of a 2020 Harley-Davidson Road Glide, traveling on Sports Arena
15 Drive north of Rose Hills, in City of Pico Rivera, California. As a legal proximate of the
16 dangerous condition of the roadway, decedent lost control of his motorcycle and crashed
17 into a dangerously placed and improperly positioned K-rail.

18 18. As a direct and proximate result of Defendant's negligence, tortious
19 conduct and wrongdoing, Decedent perished.

20 19. As a direct and proximate result of Defendant's negligence, tortious
21 conduct and wrongdoing, Plaintiff suffered the death of her beloved father, and
22 experienced severe emotional distress.

23 20. As a further direct and proximate result of the negligence of the Defendant,
24 plaintiff has lost forever the care, comfort, society, companionship and support of
25 decedent CRAIG McCUE. Said losses have caused plaintiff economic and non-economic
26 damages, all in an amount unknown at this time, but according to proof at the time of
27 trial.

28 21. Plaintiff demands \$25,000,000.00.

WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as follows:

- 3 1. For general damages according to proof;
 - 4 2. For special damages according to proof;
 - 5 3. For costs of suit incurred herein;
 - 6 4. For such other and further relief as the court deems just and proper.

JURY DEMAND

9 Plaintiff demands a trial by jury of all issues so triable pursuant to Rule 38 of the
10 Federal Rules of Civil Procedure.

13 || DATED: January 6, 2023

MANDELL TRIAL LAWYERS

By:

ROBERT J. MANDELL
Attorney for Plaintiff,
EMILY CECILIA McCUE